

2002

Exxon Mobile Corporation v. Utah State Tax Commission and State of Utah : Amicus Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

EXXONMOBILE CORPORATION,

Petitioner/Appellant,

-VS-

UTAH STATE TAX COMMISSION and
STATE OF UTAH,

Respondents/Appellees.

Case No. 20021023-SC

Oral Argument Priority No. 14

BRIEF OF AMICUS CURIAE UTAH ASSOCIATION OF COUNTIES

PETITION FOR REVIEW OF AN ORDER AND UNDERLYING RULINGS OF THE UTAH STATE TAX COMMISSION

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UTAH SUPREME COURT

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CLERK OF THE COURT

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COMPLETE LIST OF PARTIES

1. ExxonMobil Corporation (Petitioner in the Agency Proceeding)
2. Auditing Division of the Utah State Tax Commission (Respondent in the Agency Proceeding)
3. Phillips Petroleum Company (filed an Amicus Brief in Support of ExxonMobil's Request for Reconsideration in the Agency Proceeding)

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AUTHORITY FOR FILING BRIEF BY *AMICUS CURIAE*

Pursuant to stipulation of the parties, dated March 21, 2003, and the Order of the Utah Supreme Court, dated April 4, 2003, the Utah Association of Counties (“UAC”) submits the following brief as *amicus curiae*, in accordance with the provision of UTAH R. APP. P. 25.

JURISDICTION

The Utah Supreme Court has appellate jurisdiction over this matter pursuant to UTAH CODE ANN. § 78-2-2(3)(j).

ISSUE PRESENTED FOR REVIEW

UAC files this brief as *amicus curiae* solely on the issue of whether the taxpayer is entitled to the benefit of a “tie” when four Commissioners of the Utah State Tax Commission (the “Commission”) do not vote in the taxpayer’s favor by a majority of three. The instant appeal arises in the context of whether a taxpayer is due a refund based on a determination of the correct point of valuation for purposes of imposition of severance tax under UTAH CODE ANN. § 59-2-102(1)(a). This Court’s ruling with respect to UTAH ADMIN. R. R861-1A-21 (“Rule 21”) will have an impact far beyond the specific issues presented here. In effect, the taxpayer here (“Exxonmobil”) seeks to substitute the opinion of each individual taxpayer as to the meaning of statutory terms, in any case where the full Commission cannot reach a majority decision. Public policy considerations mandate that this Court reject that conclusion.

RELEVANT STATUTES

UTAH CODE ANN. § 59-1-205. Chairman -- Quorum -- Sessions.

The Governor shall designate one of the members of the commission as chairperson. Three members of the commission constitute a quorum for the transaction of business. The commission shall be in session and open for the transaction of business during ordinary business hours each day. The commission may hold sessions or conduct investigations at any place in the state to facilitate the performance of its duties.

UTAH CODE ANN. § 59-1-610:

(1) When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals or Supreme Court shall:

(a) grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review; and

(b) grant the commission no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court.

(2) This section supercedes Section 63-46b-16 pertaining to judicial review of formal adjudicative proceedings.

Commission Rule R861-1A-21. Rulings by the Commission Pursuant to Utah Code Ann. Section 59-1-205.

A. A quorum of the commission must participate in any order which constitutes final agency action on an adjudicative matter.

B. The party charged with the burden of proof or the burden of overcoming a statutory presumption shall prevail only if a majority of the participating commissioners rules in that party's

favor.

Utah Constitution, Article XIII, § 2(1):

All tangible property in the state, not exempt under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

Utah Constitution, Article XIII, § 3(1):

The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article.

SUMMARY OF ARGUMENT

In this case, the taxpayer, Exxonmobil, determined that, based on its own interpretation of the severance tax statute, it had overpaid its severance tax and it requested a refund. It requested a refund of the taxes it alleged it had overpaid and the Division, in the exercise of its statutory duties as the original assessing authority, issued its Statutory Notice, in which it denied Exxonmobil's request for refund.

Exxonmobil argues that, despite the fact that it failed to persuade a majority of the Commissioners, as required for it to prevail by UTAH ADMIN. R. R861-1A-21(B) ("Rule 21"), it should, nevertheless, have been held to have prevailed. That holding would effectively eliminate the presumption that the Division or any other duly constituted taxing authority, in the performance of its constitutionally and statutorily appointed duties, is presumed to have acted appropriately and that the burden is upon the taxpayer or other party challenging that action to persuade the Commission that an

error has been made.

It is that presumption that is encompassed within Rule 21. In this brief, UAC will demonstrate that Rule 21 is in harmony with the scheme of taxation, as established by the Utah Constitution, Utah law implementing the constitutional mandate and precedents established by this Court. Rule 21 correctly interprets the intent of the Legislature to ensure that a fair tax is imposed on all tangible taxable property. The state of the law, both here and in other jurisdictions, favors the Commission's ruling with respect to Rule 21. Further, should the Court Rule 21, the result may imperil the fiscal stability of county governments.

A R G U M E N T

I. BOTH THE STATUTORY SCHEME OF TAXATION AND EXISTING PRECEDENT SUPPORT THE HOLDING OF THE COMMISSION AND RULE 21.

Before the specific provisions of the tax statutes are discussed, reference should be made to the provisions of the Utah Constitution, from which the authority to enact the statutes flows. Article XIII, § 2 of the Utah Constitution mandates that all tangible property in the state shall be taxed at a uniform and equal rate, unless exempt under the laws of the United States, or under the Utah Constitution. Article XIII, § 3 of the Utah Constitution requires the Legislature to provide a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, “. . . as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its tangible property.”

The Utah Tax Commission “shall administer and supervise the tax laws of the

State.” Utah Constitution, Article XIII, § 11(3)(a). The Commission is empowered, *inter alia*, to “adopt rules and policies consistent with the Constitution and laws of this state to govern the commission . . . in the performance of their duties” (UTAH CODE ANN. § 59-1-210(2)); “to administer and supervise the tax laws of the state” (UTAH CODE ANN. § 59-1-210(5)); “to carefully examine all cases where evasion or violation of the laws for assessment and taxation of property is alleged, to ascertain whether existing laws are defective or improperly administered” (UTAH CODE ANN. § 59-1-210(20)); “to perform any further duties imposed by law, and exercise all powers necessary in the performance of its duties” (UTAH CODE ANN. § 59-1-210(25); and “to comply with the procedures and requirements of Title 63, Chapter 46b, in its adjudicative proceedings” (UTAH CODE ANN. § 59-1-210(27)).

The Utah Constitution divides original assessment responsibilities between the State Tax Commission, through its Property Tax Division, and the various counties, municipalities, local school districts, and special districts in the state. Relative to the severance tax at issue here, the Commission, through its Property Tax Division, has original assessment authority. See *generally* UTAH CODE ANN. §§ 59-5-1. et seq.

Thus, the State Tax Commission has more than mere administrative duties; it is also clothed with quasi-judicial duties and functions and is subject to judicial review of its decisions when a decision, ruling or order materially affects the substantial rights of the applicant for the writ, and results in a wrong interpretation of the law or a failure to follow or apply the law, or is against the undisputed evidence. See UTAH CODE ANN. §§ 59-1-301, -1-401, -1-501, -2-1007, -7-517, -10-533, -12-114, -13-210, 63-46b-3, and UTAH ADMIN R. R861-1A-20(3).

A. The Determinations Of The Taxing Authorities Are Presumed To Be Correct.

In any administrative or judicial action in which a taxpayer challenges the initial determination of the taxing authorities, the original determination shall be presumed correct if the determination was made in accordance with the agency policy and the law. See, e.g., *Trailer Train Co. v. State Board of Education*, 180 Cal.App.3d 565, 584 (1986) ("Courts have long presumed that the Board assess all property correctly, placing on the taxpayer the burden of proving that an assessment is incorrect."); *Straughn v. Tuck*, 354 So.2d 368, 371 (Fla. 1978) (holding that tax assessors are constitutional officers whose actions are clothed with the presumption of correctness.); *Powell v. Kelly*, 223 So.2d 305, 308 (Fla. 1969) (In order to overcome the presumption of correctness, a taxpayer must present proof that the tax assessor departed from the requirements of the law or that the assessment was not supported by any reasonable hypothesis of legality.); *Benson v. Town of Le Claire*, 170 N.W. 747, 748 (Iowa 1919) ("Presumptively, the value fixed by the board of equalization is equitable, and the burden rested upon appellant to overcome this presumption.") The Division's assessment, as the value determination of the original assessing authority, is thus entitled to a presumption of correctness.

The presumption of correctness was briefly discussed in *Hercules, Inc. v. State Tax Comm'n*, 877 P.2d 169 (Utah 1994):

Our review of the record reveals only one instance in which a presumption of correctness was raised. After Hercules presented its case to the Commission, Mr. Peters requested the Commission to dismiss the case for failure of proof.

During this colloquy, Mr. Peters stated that Hercules "has failed in its proof to overcome, first of all, the presumption of the validity of the initial assessment by the Salt Lake County Assessor's office." Importantly, Mr. Peters was referring to the initial assessment and not to Mr. Kent's subsequent appraisal, which Hercules claims was given a presumption of correctness by the Commission. We believe it was entirely proper for Mr. Peters to raise this issue. Hercules's assessment had been upheld by the Board; accordingly, the ***initial assessment should have been afforded a presumption of correctness*** in the hearing before the Commission.

Id. at 172 (emphasis added). Because the Statutory Notice of the Division was given to Exxonmobil in the ordinary course of the performance of the Division's statutory duties, it, too, is entitled to the presumption of correctness.

B. The Taxpayer Bears The Initial Burden Of Proof To Overcome The Presumption of Correctness Accorded Determinations Of The Taxing Authorities.

The taxpayer, or other challenging party, has the burden of overcoming the presumption of correctness accorded the original assessing authority. This burden of proof is a logical and necessary component of the presumption of correctness to which property appraisers, as constitutional officers, are entitled and is not a departure from any established administrative, judicial, statutory or constitutional mandate.

It is well established that the burden of proof rests on the party who asserts the affirmative of an issue. *Maxwell Land Grant Co. v. Dawson*, 151 U.S. 586, 604 (1898) ("Ordinarily the burden of proof is upon the party claiming the affirmative of the issue."). Simply because the issue involved is the amount of a tax, that burden is not eliminated or lessened. See *Deseret Pharmaceuticals Co. v. State Tax Comm'n*, 579 P.2d 1322,

1327 (Utah 1978) (imposing the burden of proof of a party seeking relief under the Uniform Division of Income for Tax Purposes Act); *Hercules, Inc. v. State Tax Comm'n*, 877 P.2d at 172 (Utah 1994) (holding that the burden of proof falls upon party seeking affirmative relief in ad valorem tax cases and that burden is satisfied by preponderance of evidence).

C. The Taxpayer Who Fails To Meet Its Burden Of Proof Does Not Prevail.

The core of Exxonmobil's argument on appeal is that, because four Commissioners participated in the decision and no majority decision was reached, Exxonmobil is entitled to prevail because the "act" of less than a majority of the Commission is not a valid act of the Commission. This argument is without merit.

The Utah Supreme Court in *E.C. Olson Co. v. State Tax Commission*, 168 P. 2d 324, 328 (Utah 1946), the Utah Supreme Court stated:

It is our opinion that when the legislature used the word "quorum" in reference to the Tax Commission it intended that when a quorum of the Commission is present a majority thereof is sufficient to conduct the business of the Commission. [Citations omitted.]

* * *

Thus, when four commissioners of the Tax Commission are present, three must agree to constitute an act of the Commission. When only three are present, two must concur to constitute an act of the Commission. If only two participate, whether they agree or not, their actions are not those of the Commission because there is no quorum.

The statute and interpretive decisions of the Utah Supreme Court require a quorum of the Commission to be present in order to transact business and further require a majority of the Commissioners present to constitute an "action" of the Commission.

The question then becomes whether or not the Commission's decision, finding that Exxonmobil had not persuaded the majority of participating commissioners to Exxonmobil's point of view, is an "action" of the Commission that would overturn the Division's original, lawful assessment. It is not.

As noted above, the Division performed its statutory duties by reviewing the request for refund and issuing its Statutory Notice denying the request. Had Exxonmobil not filed its request for redetermination, that is where the matter would have rested. Exxonmobil did, however, file a request for redetermination, in which it asked the Commission for affirmative relief. It failed to meet its burden of proof and the Division's original action was not, therefore, altered in any way.

The holding of this Court in *E.C. Olson Co.* is not inconsistent with the result reached by the Commission here. To change the determination reached by the duly constituted taxing authority, the Division, a majority of Commissioners (three) had to agree with the position argued by Exxonmobil. Exxonmobil failed to persuade a majority, but claims it should still have been deemed to have prevailed. Long-standing Utah precedent rebuts that argument. In *Utah Power & Light Co. v. State Tax Commission*, 590 P. 2d 332, 335 (Utah 1979) the Supreme Court stated:

Where the taxpayer claims error, it has an obligation, not only to show substantial error or impropriety in the assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation.

See also Alta Pacific v. Utah State Tax Commission, 931 P. 2d 103, 113 (Utah 1997)

("[A]lthough Sevier County's assessments, however, did not detail how each of the regulatory restraints impacted its assessments, this is not a ground for reversal since

the owners' appraisal did no better.") The Court recently addressed the issue in *Utah Railway Co. v. Utah State Tax Commission*, 2000 UT 49, ¶ 10, 5 P.3d 652, where the Court observed:

Where a taxpayer challenges the valuation of property before the Commission, the entity defending against the challenge must present the available evidence supporting the original valuation. Once that is done, the taxpayer, or any other entity seeking an adjustment of the original valuation, must meet its twofold burden of demonstrating "substantial error or impropriety in the [original] assessment," and providing "a sound evidentiary basis upon which the Commission could adopt a lower valuation."

5 P.3d at 656. That the Division participates in administrative proceedings in which it takes an adverse position to a taxpayer does not destroy the presumption of correctness to which it, and all other taxing authorities are entitled when exercising their official duties.

D. The Commission's Determinations Regarding Policy For Implementation Of Tax Statutes Is Entitled To A Degree Of Deference.

In its Final Decision, the Commission acknowledged that Exxonmobil had presented a reasonable interpretation of when production is completed for purposes of imposing the severance tax.¹ The Commission went on to note, however, that the Division's interpretation was "also a reasonable and permissible definition, is the one that has been in use for more than ten years and has been applied consistently with a number of similarly situated taxpayers."² Exxonmobil has cited no authority for the

¹ Final Decision at 12, R. 291.

² *Id.*

proposition that when two reasonable interpretations of the same statute are advanced – one by the taxing authority entitled to a presumption of correctness and one by a taxpayer seeking to lower the amount of its tax – the taxpayer is entitled to prevail when it fails to persuade a majority of the taxing authority. The converse is true.

In *Morton International, Inc. v. Auditing Division*, 814 P.2d 581 (Utah 1991), this Court stated:

In the absence of a discernible legislative intent concerning the specific question in issue, a choice among permissible interpretations of a statute is largely a policy determination. The agency that has been granted authority to administer the statute is the appropriate body to make such a determination. Indeed, both the legislative history to section 63-46b-16 and our prior cases suggest that an appellate court should not substitute its judgment for the agency's judgment concerning the wisdom of the agency policy.

Id. at 587-89. See also *Salt Lake City v. Salt Lake County*, 568 P.2d 738, 741-42 (Utah 1977) (“[I]n case of any uncertainty or ambiguity in the statute, a reasonable administrative interpretation and practice should be given some weight. This is particularly true when such administrative interpretation and practice has persisted for a long time without any legislative correction or change.”)

The language at issue here is the term “value at the well,” which is the value upon which the severance tax is assessed. The Legislature defined “value at the well” as meaning the “value of oil or gas at the point production is completed.” The oil or gas can be sold at the well head, or removed, further refined and sold at another location. The value at the well head is lower than the value after the oil or gas is further refined. Not surprisingly, the taxpayer would like to pay a tax on the value of the oil and gas at the well head. Because the product can be sold there, it may reasonably be said that

production is complete and, therefore, Exxonmobil's interpretation is reasonable. However, Exxonmobil does **not** sell its product at the well head. Instead, it further refines the product and sells it at a higher price.³ The Commission's long-standing policy is to impose the severance tax on the value of the property actually sold. That policy and interpretation of the statute is in harmony with the constitutional mandate that all property be taxed at a fair and equal rate "according to its value in money." Utah Constitution, Article XIII, § 3(1).

Exxonmobil simply failed to persuade a majority of the Commission that its statutory interpretation was more reasonable than the Division, or, more significantly, that the Division's interpretation was in error and that the error resulted in some prejudice to Exxonmobil.⁴

II. PUBLIC POLICY CONSIDERATIONS MANDATE THAT THE COMMISSION'S RULING BE AFFIRMED.

It is well settled that the fundamental purpose for the imposition of taxes upon individuals and entities by the government is the funding of public services. The taxation system implemented by the Legislature is designed to ensure that "every person and

³ Exxonmobil is entitled to deduct certain expenses associated with its further refinement of the product. Because UAC's position is not specifically addressed to the severance tax, but is addressed to the impact of the proposed shifting of the burden of proof, UAC does not address in detail the points raised by Exxonmobil in Point III of its brief, which is directed to the relief it requests should the Court find, as it should, that Exxonmobil is not the prevailing party under its "tie goes to the taxpayer" theory. Those points are ably addressed by the Commission in its responsive brief.

⁴ Indeed, the Commission's Final Decision specifically noted that the Division's policy had been uniformly applied to taxpayers similarly situated to Exxonmobil over a long period of years.

corporation shall pay a tax in proportion to the value of his, her, or its tangible property.”

This Court recognized that principle in *Robinson v. Hanson*, 282 P. 782 (Utah 1929),

when it noted:

It is a recognized principle of law that taxes for general governmental purposes, lawfully imposed by the state, are paramount to all other demands against the taxpayer, although the statute imposing the tax does not expressly declare such priority. This rule rests upon public policy and necessity. Civil government cannot exist or be maintained without revenues, and taxes levied by the state for its support are founded upon a higher obligation than other demands. It is essential to the dignity and power of the sovereign state that taxes levied by it be promptly collected without fail [Citations omitted].

Id., at 783.

The question of what happens when a majority of judges in a court of competent jurisdiction, or commissioners in an administrative tribunal, cannot agree is not a common one, but it is one with legal precedent. In *Lee v. State*, 517 A.2d 774 (Maryland Ct. Spec. App. 1986), the court noted that “a conscious non-decision is a form, albeit a rare one, of deciding.” *Id.* at 779. The court explained:

The action of a duly constituted trial court is presumptively correct. The appellant, civil or criminal and regardless of his posture below, is always the moving party attempting to persuade the appellate court that the trial court committed error. The burden of proof is, therefore, allocated to the party claiming error to prove error. When the moving party fails to persuade a majority of the reviewing court that the trial court’s decision was in error, the appellant has by definition failed to sustain his burden of persuasion. The presumptive validity of the decision below stands un rebutted.

Id. The *Lee* court quoted a 1868 decision of the United States Supreme Court in support of its conclusion:

In cases of appeal or writ of error in this court, the appellant or plaintiff in error is always the moving party. It is affirmative action which he asks. The question presented is, shall the judgment, or decree, be reversed? If the judges are divided, the reversal cannot be had, for no order can be made. The judgment of the court below, therefore, stands in full force. It is indeed, the settled practice in such case to enter a judgment of affirmance; but this is only the most convenient mode of expressing the fact that the cause is finally disposed of in conformity with the action of the court below, and that that court can proceed to enforce its judgment. The legal effect would be the same if the appeal, or writ of error, were dismissed.

Id. (quoting *Durant v. Essex Co.*, 74 U.S. (7 Wall.) 107, 112 (1898)). Rule 21 is consistent with these holdings.

Exxonmobil's proposed interpretation of Rule 21 would completely alter the adversarial system implemented by the Utah Tax Code for resolution of tax disputes by essentially eliminating the burden of proof. At the very least, it shifts the burden of proof from the taxpayer to the assessing authority and eliminates the presumption of validity which attaches to original assessments in tax cases. It is in direct conflict with prior decisions of this Court concerning the taxpayer's burden when challenging an assessment of the taxpayer's property and is contrary to prior administrative rules.⁵

⁵ Exxonmobil also argues that it should not be bound by the present version of Rule 21. However, because Rule 21 is procedural, not substantive, the rule in effect at the time of the formal hearing, not at the time the disputed tax returns were filed by Exxonmobil, is applicable. See *Pilcher v. Department of Social Services*, 663 P.2d 450, 455 (Utah 1983) ("procedural statutes enacted subsequent to the initiation of a suit which do not enlarge, eliminate, or destroy vested or contractual rights apply not only to future actions, but also to accrued and pending actions as well."); *State v. Thurman*, 846 P.2d 1256, 1267 (Utah 1993) (Standard of review is "a matter of procedural, rather than substantive, law."); *Board of Equalization v. Utah State Tax Comm'n ex rel. Benchmark*, 864 P.2d 882, 884 (Utah 1993) (finding that UTAH CODE ANN. § 59-1-610 does not "enlarge, eliminate or destroy" vested or contractual rights and using this reasoning to apply section 59-1-610 retroactively.).

In this case, Exxonmobil sought a refund of severance taxes which had been assessed and paid, but which Exxonmobil alleged had been miscalculated based on Exxonmobil's interpretation of UTAH CODE ANN. § 59-5-101(19). The Division, in the exercise of its ordinary statutory duties, reviewed Exxonmobil's request for refund, determined that Exxonmobil's calculations were incorrect, based upon the Commission's rules and long-standing Division policy and procedure, and issued a Statutory Notice denying the requested refund. Appellant's Brief at 7, citing R. at 660 and 281. The issuance of the Statutory Notice established the value of Exxonmobil's property which was subject to the severance tax. In other words, it was an official action of a constitutionally and statutorily sanctioned agency in the official exercise of its duties.

At that point, no further action by the Division or any other taxing authority, was required to impose or enforce the tax. At that point, it was incumbent upon Exxonmobil to file a Request for Redetermination, challenging the Division's Statutory Notice. To the same extent that an original assessment is entitled to a presumption of correctness, the Division's Statutory Notice denying Exxonmobil's request for refund is entitled to that same presumption.

The presumption of correctness is a necessary component of governmental authority. It serves the purpose of finality, in the absence of a timely challenge, for budgetary and borrowing purposes. Tax revenue is the source from which governmental entities fund necessary public services. It is for that reason that taxing authorities are presumed to have conducted themselves in accordance with constitutional and statutory mandates and are presumed to have acted correctly. It is

for that important purpose that the burden is placed upon the party challenging a determination of taxing authorities. Exxonmobil has presented no compelling argument for either shifting the burden of proof to the taxing authorities or eliminating the presumption that the taxing authorities have acted correctly.

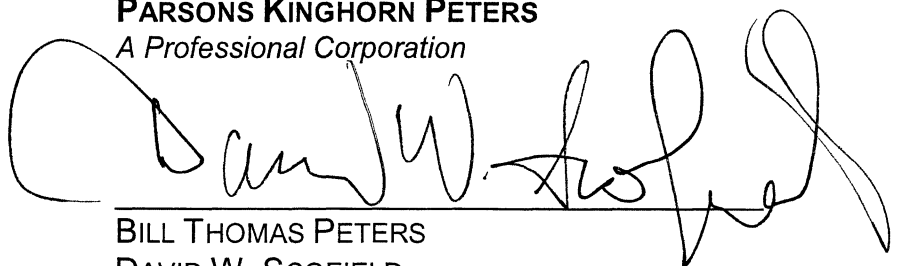
CONCLUSION

The presumption of correctness accorded taxing authorities is an important and necessary component of the administration of the tax laws in this state and implicates the fiscal stability of the state and its various governmental entities. The Court should reject Exxonmobil's attempt to eliminate that presumption and shift the burden of proof in administrative proceedings before the Tax Commission. The tie should not go to the taxpayer. The taxpayer must persuade the Commission to obtain the relief it requests.

For these reasons, the decision of the Commission should be affirmed.

DATED this 12th day of May, 2003.

PARSONS KINGHORN PETERS
A Professional Corporation

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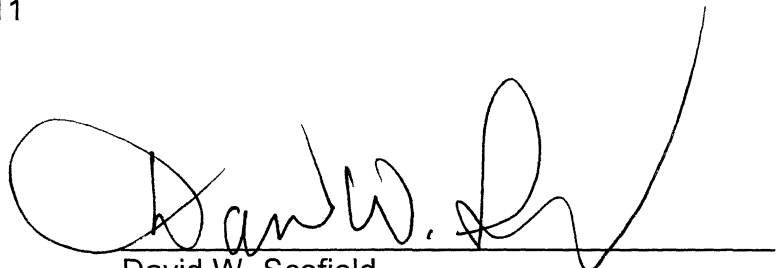
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that two true and correct copies of the above and foregoing Brief of Amicus Curiae Utah Association of Counties was mailed, postage prepaid, this 12th day of May, 2003, to the following:

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